IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: J U D G M E N T :

S.B. Civil First Appeal No.29/1989.
(Danu Ram Vs. Smt. Bhagwanti & Others)

DATE OF JUDGMENT : July 25th , 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. Vijay Agarwal for the appellant.
Mr. R.K. Singhal for respondents.

BY THE COURT :

This appeal has been filed by defendant Danu Ram s/o Jailal under Section 96 of the Code of Civil Procedure challenging the validity of judgment and decree dated 03.01.1989 passed by Addl. District Judge No.2, Sriganganagar (hereinafter, "the trial Court") in Civil Suit No.350/85 (108/85) whereby suit filed by the plaintiff-respondent Smt. Bhagwanti was decreed against appellant and defendant-respondents No.2 to 5.

According to facts narrated in the plaint, plaintiff-

respondent Smt. Bhagwanti pleaded that defendant-appellant with respondents No.2 to 5 constituted firm known as Lalchand Madanlal, carrying business at Shop No.40 – 41, Pratap Market, Sriganganagar. It was pleaded in the suit that due to cordial relations with the defendants, she used to deposit money with respondent No.2 from time to time and, as and when necessary, used to draw the money and the defendant firm and its partners had also agreed to pay interest at the rate of 18 per cent on the deposited amount. As per the plaintiff, at the end of the year respondent No.3 Madanlal Wadhwa, on behalf of respondent No.2 firm, showing detail of the account used to issue a rukka (accounts-slip) under his signature. The plaintiff further pleaded in the suit that every year the amount was taken as the principal amount after including the interest accrued thereupon.

According to the plaintiff's case, for the last time, detail of accounts was given to her on 01.04.1985 and on that date a sum of Rs.10,575.56 ps was due from the firm and, on the same day, respondent No.3 issued a rukka for and on behalf of the firm for the said amount. The plaintiff claimed that till filing of the suit, a sum of Rs.1029.44 ps became payable as interest and as such the total sum of Rs.11,596/- was due from the defendant firm which she was entitled to get and, accordingly,

prayed the said amount has not been paid to her, therefore, decree of the said amount may be passed in the suit in her favour against the defendants.

Defendant-respondents No.2 to 5 did not file any written-statement before the trial Court and only appellant-defendant contested the suit and filed written-statement. The appellant contended in the written-statement that no amount was deposited by the plaintiff with the firm nor any commercial transaction occurred in between the plaintiff and defendant firm. The appellant defendant contended that there is no question of payment of any amount to the plaintiff as claimed by her. According to the written-statement filed by appellant Danu Ram, the business of the respondent firm was looked after by respondents No.3 to 5 and all the accounts were kept in possession of respondents No.3 to 5, therefore, he had no knowledge whether any rukka was issued for and on behalf of the defendant firm to the plaintiff in respect of any deposits allegedly made by her with the firm. The appellant defendant alleged that the so-called rukka has been issued in collusion with defendant No.3 with a view to causing undue loss to defendant firm. The appellant also prayed for compensatory cost because of non-filing of written-statement on behalf of respondents No.2

to 5. At the trial, ex parte proceedings was taken against defendants No.2 to 5 and the only reply was filed by defendant-appellant.

On the basis of the pleadings of the parties, the trial Court framed the following issues :

> "(1)क्या फर्म प्रतिवादी का कार्य प्रतिवादी सं०-2 लगायत 5 करते हैं ?
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> (2)क्या दिनांक 1-4-85 को वादी के फर्म प्रतिवादी के जिम्मे 10575 रू० 56 पैसा बकाया मानकर प्रतिवादी सं०-2 ने प्रतिवादी नं०-1 की तरफ से रूक्का तहरीर व तकमील करवा दिया ?
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> (3)क्या वादी प्रतिवादीगण से 18 प्रतिशत प्रतिवर्ष ब्याज प्राप्त करने का अधिकारी है ?
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> (4)क्या प्रतिवादी सं०-5 वादी से 1000 रूपये विशेष हर्जाना प्राप्त करने का अधिकारी है ?
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> (5)क्या प्रतिवादी सं०-5 का जवाबदावा सही रूप से प्रस्तुत नहीं किया गया है ?
>
> (6) अनुतोष ?"

Thereafter, the learned trial Court proceeded to try the suit. In support of the suit, statement of plaintiff herself was recorded as P.W.-1 and the suit document 'rukka' was exhibited as Ex.-1. On behalf of the defendant-appellant, he examined himself as D.W.-1, however, no documentary evidence was produced by him at the trial.

The learned trial Court after considering the material on record and having heard the parties recorded its findings and

decided issues No.1, 2, 3 and 4 in favour of the plaintiff-respondent and consequently decreed the plaintiff's suit for recovery of the amount of Rs.11,596 alongwith interest at the rate of 6 per cent per annum from the date of filing the suit i.e., 21.08.1985 upon the actual amount of Rs.10575.56 ps. till recovery of the said amount.

It is contended by learned counsel for the defendant-appellant that the judgment and decree passed by the learned trial Court is against law and the trial Court has committed a legal error while deciding issues No.1 to 4 in favour of the plaintiff because the defendant-appellant was partner of the firm from the year 1982 to November 1984 and after that because of dispute among the partners the firm was dissolved, however, no agreement to this effect was written; but, immediately upon dispute having arisen among the partners, the partners were embroiled in litigation. It is argued that the plaintiff is real sister of respondent No.3 Madanlal Wadhwa whereas respondent No.4 is his real brother and respondent No.5, the mother. According to the appellant, therefore, upon dispute having arisen between the appellant, on the one hand, and respondents No.3 to 5, on the other, the appellant was ousted from the firm and whole business as also the accounts of the defendant firm were

usurped by respondents No.3 to 5. It is contended by learned counsel for the appellant that in the trial of civil suit the learned trial Court has committed grave error while losing sight of these important facts and circumstances of the case which had direct bearing upon the adjudication of the issues in the suit. According to learned counsel for the appellant, it has been wrongly inferred by the trial Court that no cross-examination was made to the plaintiff Bhagwanti and in the cross-examination it was clearly asked to her that she being sister of Madan Lal was in collusion with him and, in fact, no amount was due, therefore, the whole judgment is misdirected, misconceived and erroneous.

It is further argued by learned counsel for the appellant-defendant that issue No.2 is wrongly decided in favour of the plaintiff as no amount was deposited by the plaintiff-respondent with the firm and the learned trial Court has given undue weightage to the suit-document 'rukka' Ex.-1 which is alleged to have been issued on 01.04.1985. It is contended on behalf of the appellant that the respondent No.3 had no authority to issue such 'rukka', therefore, the said 'rukka' (accounts-slip) cannot be taken in evidence as a correct document for the purpose of passing a money decree in favour of the plaintiff in spite of the

fact that there is categorical denial by the defendant-appellant. In addition to this, it is further contended, the plaintiff has not filed any statement of account with the suit to show as to what was the original amount deposited and when the same was deposited with the firm and the dates on which each transaction in her account was carried out with the firm.

It is further submitted that since the liability of the partners is joint and several towards third party and relations of appellant with respondent No.5 turned sour, respondent No.3 in order to harass the appellant gave 'rukka' to the plaintiff, therefore, it is apparent that so called 'rukka' was issued unauthorizedly by a partner with regard to liability without the knowledge of the firm and/or other partners of the firm and, therefore, it cannot be inferred that consent by necessary implication was given by other partners. He relied upon Gadu Bibi Vs. Parsotam, reported in 1888 ILR (10) Allahabad 418, wherein the Division Bench held that the mere writing or signing of an acknowledgment by one partner does not necessarily of itself bind his co-partners, unless also it can be shown that he had power to bind that partner for the purpose of making such an acknowledgment, and in effect purported as to bind him. This is in the light of sub-section (2) of Section 20 which lays down

that partners are not chargeable by reason “only” of a written acknowledgment signed by one of them. Therefore, there is no documentary evidence to establish the said rukka which is not legally acceptable to bind the appellant.

Learned counsel for the appellant next contended that when no amount was deposited by the plaintiff with the firm then there cannot be any question of claiming interest, therefore, the learned trial Court committed serious error in deciding issue No.3 in favour of the plaintiff. The trial Court further fell in error while compounding the interest while decreeing the suit of the plaintiff. It is vehemently urged that it was specifically averred in the written-statement that the defendant-appellant was ousted from the firm and the said 'rukka' was admittedly issued on 01.04.1985, the date on which the appellant had no connection with the firm, therefore, the learned trial Court has committed serious error of law while passing a civil consequential decree against the defendant-appellant.

Per contra, learned counsel for the plaintiff-respondents vehemently argued that all the grounds raised by the defendant-appellant Danu Ram are fictitious and deserve to be rejected because the trial Court has decreed the suit not only against the defendant-appellant but also against the defendant-respondents

No.2 to 5 including the firm Lalchand Madanlal and its partners. The defendant-appellant himself did not press issue No.4 and, therefore, the same was decided against him. Likewise, issue No.5 which was not pressed by the plaintiff was decided against the plaintiff in favour of defendant No.5.

It is contended by learned counsel for the plaintiff-respondent that no reply was filed by the other defendants including the firm and only reply was filed by the appellant and the learned trial Court has rightly accepted the 'rukka' Ex.-1 to be proved because no reply was filed by defendant No.3 who had issued the rukka, therefore, there is no error in the judgment and decree passed by the trial Court.

I have given my thoughtful consideration to the arguments advanced by both the parties. I have also carefully gone through the material on record.

Before this Court, much stress is laid by learned counsel for the appellant on the argument that the appellant ceased to be partner of the firm after November 1984 and, therefore, the rukka issued on 01.04.1985 had nothing to do with him. In fact, there was no such issue framed by the trial Court and the argument advanced on behalf of the appellant appears only to be an afterthought. The defendant-appellant contested the suit and

whole basis of argument of the appellant defendant is that respondent No.3 was not authorized to issue the rukka being a partner and, if at all, he was having the authority in that regard it was to be proved before the trial Court. In my opinion, the appellant cannot sit in two boats. Either he could agitate that he was no more partner of the defendant firm after November 1984 or plead that respondent No.3 had no authority to issue the rukka. Therefore, the said rukka which is issued on 01.04.1985 by respondent No.3, which is not disputed by respondent No.3 being partner of the firm, then no other finding can be arrived at except the one arrived at by the learned trial Court that the said rukka was issued on 01.04.1985 by respondent No.3 and there was liability upon the firm for payment of Rs.10,575.60 ps upon which the respondent-plaintiff was entitled to get interest also.

In this case, it is very important fact that the firm has not challenged the judgment and decree passed by the trial Court. Only the appellant, being defendant No.5 in the suit, filed the written-statement as well as present appeal challenging the judgment and decree passed by the trial Court. The author of the suit document "rukka" has, at no stage, disputed it nor the defendant firm has challenged the decree. Therefore, the contention of the appellant cannot be accepted that finding on

issues No.1 and 2 is erroneous.

With regard to the judgment cited by learned counsel for the appellant, it is clear that the facts of that case were entirely different. Moreover, despite written-statement filed by the appellant in the suit, no issue was framed by the trial Court for adjudication as to whether respondent No.3 was legally authorized to issue the rukka as partner, therefore, the ground sought to be taken up by the appellant has no force of law and as such the judgment cited by learned counsel for the appellant is not applicable to the facts and circumstances of the present case.

The contention of the appellant cannot be accepted that other partners were close relatives of the plaintiff and, therefore, they were in collusion with each other and as such the suit was filed. There is nothing on record to show ulterior motive on the part of one partner of the firm to show that firm or a partner of it invited liability by collusion. Only on the ground that the plaintiff happened to be close relative of the other partners of the firm it cannot be presumed that liability was generated by collusion and, therefore, the finding on the issue with regard to outstanding against the firm does not stand vitiated. Relationship, on the other hand, is a factor to nourish faith and

trust and it is not unusual that business firms take loans and accept deposits from the family members. Theory of collusion must be supported by cogent facts which is not in existence in the present case. The trial Court has rightly decided the issues and consequently decreed the suit in favour of the plaintiff-respondent. No interference is warranted in this appeal with the impugned judgment and decree.

Hence, the appeal is dismissed.

(Gopal Krishan Vyas) J.